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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,786	01/17/2001	Hirokazu Sakai	201989US3	4950

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EXAMINER

DEMILLE, DANTON D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 07/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/760,786

Applicant(s)

SAKAI ET AL.

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. **Claims 1, 2, 4-9, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aichinger (German 0096102) in view of Harris and Van Sant.**

2. Aichinger teaches the heart of applicant's invention. The only difference is the inclusion of an additional cover within the outer cover of the container. The outer cover of Aichinger detachably attaches to the upper portion of the body over said opening. There is no unobviousness to provide an additional cover over the container opening so that the contents doesn't spill when the outer cover is removed. <sup>during use</sup> Harris teaches just such a convention. Figure 3 shows a container with an outer cover detachably attached to the upper portion of the body without an inner over. Figure 2 teaches the provision of including an inner cover removably covering the container opening. It would have been obvious to one of ordinary skill in the art to modify Aichinger to include an inner cover over the container opening as taught by Harris to prevent the contents from spilling when the outer cover is removed.

3. There is also no unobviousness to the shape of the projections. The shape of the projections can be modified to better conform to the shape of the human body. <sup>Aichinger already teaches the projections form a concave shape</sup> Van Sant teaches <sup>to conform to the shape of the head.</sup> that the height of the projections can decrease toward the center portion to form an imaginary concave plane, page 2, lines 25-29. It would have been obvious to one of ordinary skill in the art to further modify Aichinger to shape the ends of the projections to be concave as taught by Van Sant to better conform the surface of the projections to the shape of the human body. The <sup>It is not an invention step to do</sup> shampoo container of the instant invention and the prior art are applying the device to the head <sup>who have thing a little different</sup> of the user. The head is concave and to shape the ends of the projections to conform to the

concave shape of the head would have been an obvious to one of ordinary skill in the art as exemplified by Van Sant.

4. Regarding claims 5-7, 12-14, specific dimensions and compositions of the projections are well within the realm of the artisan of ordinary skill dependent on practical considerations of intended use. Conventional rubbers, densities or dimensions such as that claimed are obvious well known variables in the construction of the device.

5. **Claim 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Richardson.** Richardson teaches the convention of providing a cover over the massaging projection to protect them from damage or being soiled for example. It would have been obvious to one of ordinary skill in the art to further modify Aichinger to include a cover over the projections as taught by Richardson to cover the projections from damage or being soiled.

6. **Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 8 above, and further in view of Gueret.** Aichinger and Richardson appear silent with regard to the Shore hardness of the projections because such is well within the realm of the artisan of ordinary skill. A Shore hardness of 20 to 80 is a pretty wide range. Obviously the hardness can fall within a wide range of Shore hardness. Gueret teaches massage projections that have a Shore hardness of 35. This would appear to fall within the claimed range. It would have been obvious to one of ordinary skill in the art to further modify Aichinger to use a Shore hardness of 35 as taught by Gueret to provide the projections with the proper amount of flexure to the skin of the user to affect a proper massage.

7. **Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aichinger (German 0096102) in view of Harris and further in view of Homma et al. and Van Sant.** Using a conventional shampoo such as one that includes a cationic polymer, nonionic surface active agent, alcohol and water would have been an obvious provision in Aichinger or Harris. Homma teaches such a shampoo composition that includes 0.05 to 2.5 % cationic polymer (abstract), nonionic surface active agents (column 2, lines 4-5), alcohol (column 5, line 14) and the balance with water. It would have been obvious to one of ordinary skill in the art to modify shampoo container as set forth in claim 1 with the shampoo itself such as taught by Homma to complete the shampoo container.

8. There is also no unobviousness to the shape of the projections. The shape of the projections can be modified to better conform to the shape of the human body. Van Sant teaches that the height of the projections can decrease toward the center portion to form an imaginary concave plane, page 2, lines 25-29. It would have been obvious to one of ordinary skill in the art to further modify Aichinger to shape the ends of the projections to be concave as taught by Van Sant to better conform the surface of the projections to the shape of the human body. The shampoo container of the instant invention and the prior art are applying the device to the head of the user. The head is concave and to shape the ends of the projections to conform to the concave shape of the head would have been an obvious to one of ordinary skill in the art as exemplified by Van Sant.

#### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

10. Van Sant clearly teaches the convention of shaping the ends of the projection to be concave in order to conform to the shape of the head. Such would have been an obvious provision in the modification of Aichinger

11. Applicant argues that Richardson is not a massaging brush. Applicant is arguing the label you attach to devices. It is immaterial what you want to call the device. The intended purpose is the same. It is a container with a cap of projections for applying fluid to the scalp. The intended purpose is the same. Moreover, this point is further immaterial because the purpose of the teaching of Richardson is the convention of providing a separate cover over the projections to protect them during non-use. Such is an obvious provision to protect the projections of Aichinger.

12. Harris and Homma et al. are not cited to teach everything claimed. Aichinger already teaches that. Harris is merely cited to teach the convention of adding a separate cap to the container opening so that the contents doesn't spill when the projections are used separately. Harris teaches both ways of using a separate cap and without. Homma is merely recited to teach the details of the shampoo. Obviously any conventional shampoo can be used in the Aichinger device. Homma merely teaches the conventional shampoo.

### *Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


ddd

1 July, 2003

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